

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, ex rel.
ROBERT ABRAMS, Attorney General,

Plaintiff,

-against-

MATSUSHITA ELECTRIC CORPORATION OF AMERICA,
JOHN DOE 1-500,

Defendants.
-----X

:
: COMPLAINT

: Civil Action No.

: 89-0368

: JURY DEMAND

This antitrust action, alleging a nationwide conspiracy to fix the retail price of Panasonic and Technics consumer electronics merchandise is brought by the State of New York and its Attorney General Robert Abrams (the "State"). The State brings this action on its own behalf and as parens patriae on behalf of all natural persons residing in the State who have purchased Panasonic and Technics products during the period of the conspiracy, for injunctive relief, civil penalties, and monetary relief of threefold the damage sustained as a result of the defendants' violation of the antitrust laws of the United States and of the State of New York in fixing the retail prices of consumer electronic products distributed by Matsushita Electric Corporation of America ("Panasonic").

I

JURISDICTION AND VENUE

1. This complaint is filed and the jurisdiction and venue of the Court are invoked under the provisions of 28 U.S.C. §§

1331 and 1337 and 15 U.S.C. §§ 15, 15c, and 26 to recover monetary relief for injuries sustained and for injunctive relief against continuing violations by the defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The corporation named as a defendant herein is found or resides or has an agent in the Southern District of New York. Some or all of the claims stated herein arose in the Southern District of New York.

3. The complaint also alleges violations of the Donnelly Act, New York's antitrust law, N.Y. General Business Law § 340 et seq. All claims under federal and state law are based upon a common nucleus of operative facts and the entire action commenced by this complaint constitutes a single case which would ordinarily be tried in one judicial proceeding.

4. The Court has pendent jurisdiction over the claims based upon New York law. Pendent jurisdiction should be exercised in the interests of judicial economy, convenience and fairness.

II

Definitions

5. As used herein:

(a) "Panasonic and/or Technics Products" means consumer electronics products and home appliances distributed under the Panasonic and Technics brand names for which suggested minimum retail prices were issued by defendant Panasonic to its customers who resell such products to end-user consumers.

(b) "Go Prices" means suggested minimum retail prices issued by Panasonic between March 1, 1988, through and including August 31, 1988.

(c) Panasonic and Technics products for which Go prices were issued include models of TV receivers, rack systems, Hi Fi components, CD players, VCRs, camcorders, answering machines, cordless telephones, and other consumer electronics products and home appliances.

III

Plaintiff

6. The State of New York, by its Attorney General, ROBERT ABRAMS, brings this action on its own behalf and as parens patriae on behalf of all natural persons residing in New York State who have purchased Panasonic or Technics products sold and/or distributed by the defendants and their co-conspirators, during the period of the conspiracy alleged herein in New York State. The State and the natural persons described herein ("parens patriae group") have sustained damages as a result of the violations alleged herein of Section 1 of the Sherman Act, 15 U.S.C. § 1 and the Donnelly Act, General Business law § 340 et seq. by defendants and their co-conspirators.

IV

Defendants

7. Defendant Matsushita Electric Corporation of America ("Panasonic") is incorporated under the laws of the State of Delaware and has its principal place of business at One Panasonic Way, Secaucus, New Jersey. During all or part of the period of

time covered by this complaint, Panasonic and its divisions have been engaged in the business of manufacturing electronic products and distributing consumer electronic products to wholesalers, retailers, and distributors located throughout the United States, including the State of New York. Defendant's affiliated divisions include Panasonic Company, Panasonic Industrial Company, Matsushita Industrial Company and Matsushita Services Company, among others.

8. Defendants JOHN DOE 1-500 are those retailers of Panasonic and Technics products who participated in the contract, combination or conspiracy alleged herein and sold such products to members of the parens patriae group.

V

Co-Conspirators

9. Various firms, persons, corporations, or other business entities, known and unknown to plaintiffs, not named as defendants herein, have participated as co-conspirators with defendants in the violations alleged below and have performed acts and made statements in furtherance thereof.

VI

Trade and Commerce

10. Matsushita Electric Industrial Co., Ltd, ("Matsushita") the parent company of Panasonic, is located in Kadoma, Osaka, Japan. It manufactures, sells and distributes electronic products. Matsushita sells consumer electronic products under the brand names "Panasonic" and "Technics", among others, to defendant Panasonic, the exclusive importer for the continental

United States of those products. Defendant Panasonic sells Panasonic and Technics brand products to wholesalers, distributors and retailers located throughout the United States, including approximately 648 retailers located within the State of New York.

11. The consumer electronics products sold and distributed by defendant Panasonic to the defendant retailers are shipped in interstate commerce.

12. During all or part of the period covered by this complaint, Panasonic and Technics consumer electronics products were sold at retail in New York by the defendant retailers, among others, and throughout the United States by other electronics retailers.

13. The activities of defendants including receiving, distributing, and selling Panasonic and/or Technics Products have been and are in the regular, continuous, and substantial flow of interstate commerce and have had and do have a substantial effect upon interstate commerce. A portion of these activities take place or have taken place within the State of New York.

VII

First Claim for Relief

14. Beginning in approximately January 1988, and continuing thereafter until the filing of this Complaint, defendants and their co-conspirators have continually engaged in an unlawful contract, combination, or conspiracy, in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

15. The aforesaid conspiracy has consisted of a continuing agreement, understanding or concert of action among defendants and their co-conspirators, the substantial terms of which have been to fix, raise, maintain or stabilize the retail prices of Panasonic and/or Technics Products.

16. For the purpose of forming, effectuating, and furthering the conspiracy, the defendants and their co-conspirators have done those things which they combined, agreed and conspired to do, including, among other things, the following:

(a) On or about January 8, 1988, at the semi-annual Consumer Electronics Show (CES) held in Las Vegas, Nevada, defendant, Panasonic announced its new corporate policy to raise profits in the retail sale of its consumer electronic products. This policy was conveyed to numerous retail distributors of Panasonic and/or Technics Products during a series of individual meetings held during the CES show. At these meetings, Panasonic representatives stated the company's intention to "restore profitability" to the sale of its products by increasing retail prices;

(b) Panasonic representatives asked each retailer with whom they met at the CES show to agree to charge the suggested minimum retail or Go prices both for in-store sales and for advertisements, including annual catalogues, fliers and newspaper ads. Panasonic told retailers that it would not continue doing business with retailers who did not adhere to Panasonic's new policy;

(c) During other meetings held in various locations including New York State, between Panasonic representatives and retailers between January and June 1988, Panasonic repeatedly attempted to coerce retailers of Panasonic and/or Technics Products to adhere to the Go prices. Panasonic told some of the retailers with whom it met that many other large retailers of Panasonic and Technics products had already agreed to adhere to the retail prices fixed by Panasonic;

(d) At meetings at the January 1988 Consumer Electronics Show and thereafter, defendant retailers agreed to adhere to the Go retail prices when selling Panasonic products.

(e) Beginning at least as early as June 1, 1988, and continuing until the date of the filing of the complaint, defendant Panasonic prepared and updated periodic bulletins entitled "Panasonic Company Retail Price Guidelines," which listed the "Guideline Minimum" or Go prices, for numerous models of Panasonic and Technics products. Panasonic management directed that the prices contained in these lists were to be verbally provided to all retailers of Panasonic products. Panasonic sales representatives were forbidden by Panasonic management to give or show these price lists to retailers. Subsequently, the sales representatives read the lists of Go prices to retailers in person or on the telephone and often refused to provide the retailers with copies of any these lists. On occasion, Panasonic representatives disregarded management's rule regarding the secrecy of the retail prices lists and allowed

retailers to photocopy the lists or telefaxed lists to other dealers;

(f) Defendant Panasonic monitored the retail prices charged by its retailers. Certain retailers who were not in compliance with Panasonic's Go prices were contacted by Panasonic representatives who attempted to coerce such retailers into compliance with the retail prices set by Panasonic.

(g) Defendant retailers agreed with defendant Panasonic to adhere to the retail prices established by defendant Panasonic;

(h) Defendant retailers advertised and sold Panasonic and/or Technics Products in compliance with the retail prices set by Panasonic;

VIII

Second Claim for Relief

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 - 16 above with the same force and effect as if here set forth in full.

18. The aforementioned conspiracy by defendants and their co-conspirators were and are in violation of Section 340 and 342-a of the General Business Law of the State of New York.

IX

Effects

19. The aforesaid unlawful conspiracy has had the following effects, among others:

(a) Prices for certain Panasonic and Technics Products sold in New York have been fixed, raised, maintained or stabilized at artificially high and non-competitive levels;

(b) To the best of our knowledge and belief, retail prices for the following Panasonic and Technics brand items were affected by the retail price fixing agreements between Panasonic and certain of its retailers: some models of video cassette recorders (VCR's), camcorders, Technics audio products, certain telephone and answering machine models.

(c) Price competition among retailers of Panasonic and Technics consumer electronics products in New York has been restrained;

(d) The State of New York and natural person residents of New York have been denied the benefits of free and open competition among retailers of Panasonic and Technics consumer electronics products and, as a result, have paid more for Panasonic and/or Technics Products than they would have paid in a competitive marketplace.

X

Injury

20. As a result of the illegal conspiracy, the State of New York and natural persons residing in the State of New York have sustained injury to their property in amounts presently undetermined.

21. The Plaintiff State of New York, and natural persons residing within the State of New York are threatened with further injury to their property unless the defendants are enjoined from continuing or renewing their illegal conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that:

A. The Court adjudge and decree that the aforesaid conspiracy by defendants and their co-conspirators violates Section 1 of the Sherman Act, 15 U.S.C. § 1 and Section 340 of the New York General Business Law;

B. Judgment be entered against defendants, jointly and severally, for three times the amount of damages suffered by the plaintiff State of New York and the parens patriae group in accordance with Section 4 and 4c of the Clayton Act, 15 U.S.C. §§ 15, 15c;

C. Judgment be entered against each defendant corporation for a penalty of \$1,000,000, for each violation, in accordance with Section 342-a of the New York General Business Law;

D. Defendants, their successors, assigns, subsidiaries and transferees and their respective officers, directors, agents, employees and all other persons claiming to act on their behalf or in concert or participation with them be enjoined in accordance with Section 16 of the Clayton Act, 15 U.S.C. § 26 and Section 342 of the New York General Business Law from: (i) directly or indirectly continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding, plan, arrangement, program, or concert of action among themselves, their co-conspirators, or with any other persons, corporations, business entities or organizations to fix, stabilize, raise, maintain or otherwise collectively determine any price, discount, or other term or condition for any sale, offer to sell, or contract concerning the sale of Panasonic and Technics consumer electronic products; and (ii) taking any

retaliatory actions against any past or present retailer of Panasonic and Technics brand electronic products;

E. Plaintiff be awarded the cost of suit, including a reasonable attorney's fee, as provided for by Sections 4c and 16 of the Clayton Act, 15 U.S.C. §§ 15c, 26; and

F. Plaintiff be granted such other and further relief as the Court may deem just and proper.

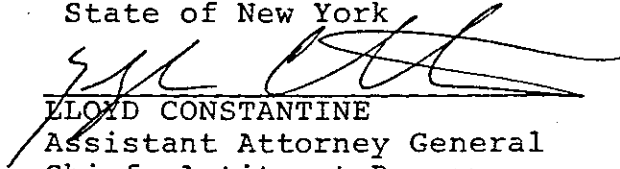
Demand for Jury Trial

Plaintiff, in accordance with Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury.

Dated: New York, New York
January 18, 1989

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